

Appeal from a decision of the Rock Springs, Wyoming, District Manager, Bureau of Land Management, approving an application for permit to drill the Sohare Creek No. 1-35 oil and gas well.

Affirmed.

1. Environmental Quality: Environmental Statements--National Environmental Policy Act of 1969: Environmental Statements

The Board will affirm BLM's approval of an application for permit to drill based on an environmental impact statement when the record reveals that BLM carefully considered all factors relevant to its decision and appellants fail to present compelling reasons for reversal or modification. Mere differences of opinion provide no basis for reversal if BLM's decision is reasonable and supported by the record on appeal.

2. Endangered Species Act of 1973: Section 7: Generally

In accordance with sec. 7(a)(2) of the Endangered Species Act, as amended, 16 U.S.C. | 1536(a)(2) (1982), BLM is required to assure that any action authorized by it is not likely to jeopardize the continued existence of any threatened or endangered species or to result in the adverse modification of the critical habitat of such species, and to use the best scientific and commercial data available to fulfill this requirement. Disagreement as to the methodology used is insufficient to justify reversal of BLM's decision as long as BLM's choice of methodology is reasonable.

APPEARANCES: Karin P. Sheldon, Esq., Denver, Colorado, for the Sierra Club et al.; John R. Swanson, Minneapolis, Minnesota, pro se; Jack D. Palma II, Esq., Cheyenne, Wyoming, John Shepherd, Esq., Denver, Colorado, and Adelia Maddox, Esq., Washington, D.C., for Amoco Production Company, intervenor; and Gina Guy, Esq., and Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE GRANT

The Sierra Club et al. <sup>1/</sup> have appealed from a March 29, 1988, decision of the Manager, Rock Springs, Wyoming, District Office, Bureau of Land Management (BLM), approving the application for a permit to drill (APD) oil and gas well No. 1-35 on the Sohare Creek Unit in Teton County, Wyoming. The well site is located within the Bridger-Teton National Forest administered by the Forest Service (FS). <sup>2/</sup> The APD was filed by Amoco Production Company (Amoco), the unit operator. Approval of the APD was predicated in part on a Final Environmental Impact Statement (FEIS) for the action, which was attached to the decision. By order dated June 16, 1988, the Board granted Amoco's motion to intervene as an adverse party in this case. The Board further ordered an interim stay of BLM's decision to approve the APD. On July 22, 1988, the Board issued an order granting Amoco's motion for expedited consideration of the appeal.

On November 12, 1985, Amoco submitted an APD to drill an 11,050-foot exploratory well on lease No. W-66212 in the Sohare Creek drainage in Bridger-Teton National Forest approximately 27 air miles northeast of Jackson, Wyoming. The proposed project included construction of a 6.0-acre well pad and resident campsite; construction of approximately 3.3 miles of new access road; drilling of a single exploratory well; production testing of hydrocarbon bearing formations; production of hydrocarbons from the well (if encountered); and reclamation of the drill site, campsite, and access road at the completion of the project.

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<sup>1/</sup> The other parties appellant named in the Sierra Club notice of appeal include the Teton County Board of Commissioners, the Jackson Hole Alliance for Responsible Planning, the Wyoming Wildlife Federation, the Wyoming Outdoor Council, and the Greater Yellowstone Coalition.

John R. Swanson filed a separate notice of appeal. Both BLM and Amoco have moved for dismissal of Swanson's appeal on the grounds that Swanson lacks standing to appeal because he has not been adversely affected by the decision. See 43 CFR 4.410(a). Swanson has not explained how he has been adversely affected by the decision, and the record reveals no interest of Swanson's that has been adversely affected by the approval of the APD. Accordingly, the motions of BLM and Amoco are granted, and Swanson's appeal is dismissed for lack of standing. Mark S. Altman, 93 IBLA 265 (1986).

Wind River Multiple Use Advocates has applied for recognition as an intervenor and has submitted comments on the appeal. Lamont R. Merritt has also filed comments on the appeal. Although both sets of comments have been made part of the record in this case, Wind River Multiple Use Advocates' request for recognition as an intervenor is denied.

<sup>2/</sup> The decision was issued jointly by BLM and by the Forest Supervisor, Bridger-Teton National Forest, on behalf of FS. Responsibility for approval of an APD for an oil and gas well lies with BLM whereas other aspects of surface management for lands within a national forest are within the jurisdiction of FS. See Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, | 5102(g), 101 Stat. 1330-256 (codified at 30 U.S.C.A. | 226(g) (West Supp. 1988)).

Pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332 (1982), and its implementing regulations, 40 CFR Parts 1500-1508, BLM and the FS issued a scoping statement to solicit public comment on the proposed well and access alternatives. Representatives of BLM, FS, Amoco, and private consultants working under the direction of BLM and FS conducted an interdisciplinary field review resulting in the development of an environmental analysis (EA) for the proposed project. Based on the EA, BLM and FS issued a decision in December 1986 concluding that the Amoco proposal may significantly affect the human environment and acknowledging the need for preparation of an EIS (environmental impact statement). A notice of intent to prepare the EIS was published in the Federal Register in January 1987, and public comment was sought.

BLM and FS prepared a biological assessment (BA) of the proposed project to determine if any threatened or endangered species or their critical habitat would be affected by the project. The original BA was completed in April 1987 and resulted in the determination that the project "may affect" the grizzly bear, a threatened species protected by the Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1536 (1982). After further analysis of seasonal habitat use by the grizzly bear and informal consultation with the United States Fish and Wildlife Service (FWS), additional grizzly bear conservation measures were added to the proposed project. An addendum to the BA was prepared to address the revised proposal and new mitigation measures. This second assessment concluded that the proposed action, as modified, was not likely to affect the grizzly bear and consequently a "no effect" determination was made. FWS concurred in the "no effect" determination by letter dated August 10, 1987.

BLM and FS distributed the draft EIS, including the BA and addendum, for public review and comment in August 1987. Walk-through tours of the site were conducted and public meetings were held. Amoco completed an Engineering Design and Geotechnical Evaluation Report for the access road construction in January 1988, and BLM and FS announced a 30-day comment period on that report. After reviewing all the comments received, BLM and FS issued the FEIS and Record of Decision for Amoco's proposed exploratory well on March 29, 1988.

The FEIS, including the BA and addendum and the five other appendices, consists of over 300 pages of data and analysis. The document includes a summary and introduction discussing the project location and description; a statement of the purpose and need for the action; a description of the environmental analysis process; a land status report; an outline of the legal and policy considerations; a statement of the authorizing actions; and a discussion of the issues and concerns surrounding the project. The FEIS describes the alternatives considered including three road access routes, two helicopter staging areas, and the no-action alternative, and provides a summary comparison of the alternatives. Extensive discussion of the environmental effect of each alternative is presented. The environmental consequences of the project on geology/paleontology, air quality, transportation, soils, water resources, fisheries, vegetation, timber, range resources, wildlife, visual resources, recreation, socioeconomics, cultural

resources, and health and safety are fully analyzed. For each aspect of the affected environment, the FEIS defines the impact significance criteria, analyzes the direct and indirect impacts of the drill site and each alternative access route, summarizes the impacts, discusses the cumulative impacts, summarizes the proposed mitigation measures for each alternative, and identifies unavoidable adverse impacts of each alternative. A separate discussion of the impacts of the no-action alternative is also included.

The FEIS contains a comparative analysis of the proposed action and alternatives, an extensive discussion of mitigation and monitoring measures, and a discussion of public participation and involvement, responding to the comments received as a result of the public participation process.

In its decision, BLM approved the APD using the Alternative A access route described in the FEIS. BLM based its approval on the FEIS, the Engineering Design and Geotechnical Evaluation Report, and the comments received from the public, State and local governments, and Federal agencies, including FWS. Approval was granted for construction of the access road and well pad, and for the exploratory well. BLM noted that, if commercial quantities of oil were discovered, no production would be permitted until further environmental analysis, including consultation with FWS, was concluded.

In the record of decision, BLM discussed the alternatives it had considered, including three different road access routes, two helicopter staging options, and the no-action alternative. Recognizing that the no-action alternative would result in the least environmental impact, BLM chose the northern access road alternative because that alternative best blended the public need for domestic oil and gas with minimal adverse environmental impacts. BLM determined that, although the impacts from the project could be significant, they had been rendered acceptable by the proposed mitigating measures. BLM noted that approval of the APD fulfilled its multiple-use land management mandate for the area, and contributed to the public policy of encouraging domestic exploration for oil and gas. BLM emphasized that approval of the APD and the grant of limited exceptions to certain lease and unit stipulations did not convey any additional rights to Amoco and did not commit BLM to future action concerning production or development.

BLM explicitly conditioned the approval on: (1) Amoco's construction of the access road in accordance with the Engineering Design and Geotechnical Evaluation Report; (2) Amoco's implementation of those mitigating and monitoring measures described in the FEIS, applicable to Alternative A; (3) Amoco's implementation of compensatory measures described in the BA and addendum to ensure that the grizzly bear and its habitat are not threatened or impaired; and (4) Amoco's obligation to obtain a Notice to Proceed with Construction from BLM or FS approving all construction, operation, reclamation, and monitoring plans (Record of Decision at 2). BLM further explained its decision by elaborating on the factors it considered, including consistency with land use and resource management plans, scoping issues, draft EIS comments, relevant resource, technical, social, and economic considerations, agency statutory requirements, national policy, mitigation measures,

monitoring and enforcement programs, and lease and unit stipulation exceptions.

In their statement of reasons (SOR), appellants argue that BLM's decision approving Amoco's APD violates both NEPA and the ESA. First, appellants contend that BLM's rejection of the no-action alternative was predicated upon the erroneous belief that it had no authority to preclude all surface-disturbing activity because the lease did not include a no-surface occupancy (NSO) stipulation for the entire lease. Appellants argue that a lease-wide NSO stipulation was not necessary because a number of stipulations in Amoco's lease and the unit agreement expressly provide that BLM can preclude surface-disturbing activities. Because the no-action alternative was clearly available, appellants argue that BLM's failure to consider that option in the FEIS violated NEPA.

Appellants next argue that BLM's decision to waive the lease and unit stipulations precluding surface-disturbing activities on unstable soils, within 500 feet of streams or 400 feet of springs, and on slopes in excess of 40 percent is not supported by the analysis in the FEIS and accompanying reports. Appellants assert that the Engineering Design and Geotechnical Evaluation Report prepared by Amoco fails to demonstrate that the approved access road can be built in an environmentally sound manner or successfully reclaimed after its use is ended. Appellants attack the sufficiency of the data upon which the report was based, relying on a February 26, 1988, comment letter written by Pete Jorgensen as the basis for their technical challenge.

Appellants further allege that the proposed mitigation measures do not meet the requirements of NEPA because those measures are unproven or ineffective, and there is no demonstration that they will be implemented or enforced. Appellants specifically argue that the prospective road closures proposed to mitigate adverse impacts on the grizzly bear are factually and legally inadequate. They contend that the FEIS does not substantiate that the closures will actually be made and enforced or that the bears will use the new habitat. Additionally, appellants assert that the FEIS fails to discuss whether the new habitat contains all elements necessary for bear survival and recovery.

Appellants also contend that BLM violated NEPA by improperly defining the scope of the proposed action, thus truncating the analysis required in the FEIS. Appellants assert that, by waiving the lease and unit stipulations precluding surface-disturbing activities, BLM gave Amoco rights not included in the underlying lease and abrogated its authority to prohibit further development or production activities on the lease, even if those activities prove to be environmentally unacceptable. Therefore, appellants argue, BLM was required to consider full field development in the FEIS. Appellants contend that drilling the exploratory well and full field development are "connected actions" within the meaning of NEPA, requiring an environmental analysis of the impact of full field development.

Finally, appellants argue that the decision to approve the APD and the northern access route violates the ESA. Appellants allege that the approval

decision violates BLM's affirmative duty to conserve the grizzly bear and provide for its recovery because it will allow activities that will reduce grizzly bear habitat and increase human-bear encounters. The flaws appellants find in the FEIS include: (1) the FEIS fails adequately to assess the impacts of the proposed access road on the grizzly bear mortality; (2) the FEIS, in relying on road closures for mitigation, incorrectly equates the average habitat value of an area with the benefit bears will derive from that area; (3) the FEIS places unwarranted emphasis on road closures as compensation for access road construction and use; and (4) the FEIS fails adequately to assess the impacts of oil and gas exploration on the bears.

Appellants further argue that BLM failed to use the best available data in approving the APD and access road because it did not use the Cumulative Effects Model (CEM) developed for the Yellowstone Ecosystem. Appellants challenge both the procedures and content of the alternative methods used by BLM in its evaluation of the cumulative impacts on the bears, and contend the alternative methods used are inappropriate, unsupported, and inadequate.

In response, BLM states that the FEIS fully considered the no-action alternative. BLM notes that, despite the possibly ambiguous language of the Record of Decision, it could have precluded all surface-disturbing activities based on the ESA stipulation in the lease, and that if the adverse impacts designed to be mitigated by the special stipulations in the lease could not be otherwise mitigated, BLM had the legal right to refuse to grant exceptions to the stipulations, thus denying the APD. BLM knew it could deny the APD, but rejected the no-action alternative after thorough and careful consideration because there was a sound basis in fact and law for choosing the selected alternative. Because the FEIS fully discussed the no-action alternative, BLM contends no NEPA violation occurred.

BLM also argues that no waiver of stipulations occurred as alleged by appellants. Rather BLM granted limited exceptions to lease and unit stipulations for this particular APD but imposed additional stipulations applicable to the APD, which were designed to achieve comparable results. The lease stipulations continue to apply to the remainder of the lease or unit, and further exceptions to those stipulations will only be granted if and when the applicant meets its burden of demonstrating that the granting of an exception would be reasonable and proper. BLM further argues that the decision to grant the exceptions was entirely proper and that the record supports the decision. BLM notes its point-by-point response to the comments in the Pete Jorgensen letter. BLM contends that the Engineering Design and Geotechnical Evaluation Report fully analyzed the feasibility of road construction and set out methods to minimize road construction impacts. Since the report contained sufficient information on which to base an informed decision regarding road feasibility, the decision to allow exceptions to the road-related stipulations in the lease is neither arbitrary nor capricious.

BLM argues that the mitigation measures described in the FEIS and made a part of its decision fully meet NEPA requirements. BLM notes that the mitigation plan satisfies the NEPA requirement that all adverse impacts from a proposed action be mitigated to the extent possible. The FEIS contains a

thorough analysis of the mitigation measures, and the APD approval contains the condition that the mitigation measures will be implemented and enforced. BLM argues that these detailed and specific measures meet the NEPA objective of compensating or nearly compensating for the adverse impacts of the proposed action and comply with the case law cited by appellants. BLM further contends that the road-closure mitigation measures for grizzly bear protection are the product of extensive analysis and informal consultation with FWS, and that the literature and expert opinion agree that road closings are effective measures to mitigate impacts to grizzly bears.

BLM contends that the scope of action in the FEIS is properly defined because BLM has retained full authority to deny field development. BLM reiterates that it has granted no waiver of the lease stipulations, and has neither expanded Amoco's rights to carry out surface-disturbing activities nor restricted the ability of BLM or FS to control the effects of those activities. Since BLM has reserved the right to preclude further activity, the scope of the FEIS was proper. Furthermore, BLM argues that approval of the APD for the first, and perhaps only, well in the exploratory unit and full field development are not "connected actions" under 40 CFR 1508.25. Therefore NEPA does not require a complete analysis of full field development.

BLM argues that the decision to approve the APD and northern access route fully complies with the ESA. BLM contends that appellants incorrectly characterize the results of the consultation process BLM undertook pursuant to the ESA. BLM notes that the ESA requires BLM to ensure that authorized actions are not likely to jeopardize endangered or threatened species or their critical habitat. Because BLM consulted with FWS to develop a plan for the project which would proceed without adversely affecting a protected species and with net benefits designed to enhance the grizzly bear's survival, BLM fully discharged its responsibilities under 50 CFR 402.14(b). By letter dated August 10, 1987, FWS concurred in the no-effect determination for the exploration phase of the project, noting that consultation must continue in order to fulfill the obligation to obtain sufficient data upon which to base a final biological opinion, and the biological opinions must be obtained for each incremental step.

BLM asserts that it has fulfilled its affirmative duty to improve opportunities for the survival of the grizzly bear. Under the mitigation plan, 4.2 miles of road in Management Situation (MS) 1 grizzly habitat (the most desirable habitat) currently available for public use will be closed, and currently unregulated human intrusion in desirable grizzly habitat will be regulated. The net gain in habitat for the grizzly bear under the mitigation plan is 126 acres of MS 1 area. Additionally the Wyoming Game and Fish Department (WGFD), FS, and Amoco have executed a memorandum of understanding for grizzly bear monitoring that provides for the contribution of funds, staff time, and field exploration to conduct further studies of grizzly bear utilization of the area.

Finally, BLM argues that it fully complied with its duty to use the best available data in its decision. Although it did not use the CEM for the Yellowstone Ecosystem because the necessary data base for the project area was not currently available, BLM states that it consulted experts and relied on materials recognized as standard works in the field along with reports of the Interagency Grizzly Bear Study Team (IGBST) headquartered at the University of Montana. The FEIS statements concerning numbers, density, and quality of habitat are based on the professional opinions of WGFD, FS, and IGBST wildlife biologists who manage and administer the wildlife in the area and who know the grizzly bear use of the affected areas. BLM contends that the consensus of opinion among the biological experts consulted and the natural resources managers involved in the project is that there is sufficient knowledge of grizzly bear biology and habitat requirements to enable responsible decisionmaking concerning approval of the APD. BLM also identifies the discussions in the FEIS addressing the issues appellants contend the FEIS fails to discuss. BLM argues that since it considered all relevant factors, no clear error of judgment occurred in the decision to approve the APD, and the decision did not violate the ESA. <sup>3/</sup>

[1] NEPA is primarily a procedural statute designed "to insure a fully informed and well-considered decision." Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978). It does "not require agencies to elevate environmental concerns over other appropriate considerations." Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97 (1983). Rather, NEPA only requires that an agency take a "hard look" at the environmental effects of any major Federal action. Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976). Factors considered relevant on review of an EIS include whether the EIS examines the five subjects explicitly listed in NEPA, <sup>4/</sup> whether the EIS constitutes a good faith compliance with NEPA, and whether the discussion of the five NEPA subjects is reasonable. Johnston v. Davis, 698 F.2d 1088, 1091 (10th Cir. 1983). The data and methodology underlying the EIS may be examined for the "purpose of ensuring that the document is a good faith, objective, and reasonable explanation of environmental consequences that responds to the five topics of NEPA's concern." Id.

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<sup>3/</sup> Amoco's response to appellants' SOR provides additional arguments and authority in support of BLM's decision.

<sup>4/</sup> NEPA describes the five subjects as follows:

- "(i) the environmental impact of the proposed action,
  - "(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
  - "(iii) alternatives to the proposed action,
  - "(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
  - "(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."
- NEPA, | 102(2)(C), 42 U.S.C. | 4332(2)(C) (1982).



Recognizing that an EIS necessarily contains evaluations that are subjective and judgmental, the Board has held that BLM is obligated to develop a reviewable record reflecting consideration of the factors relevant to its decision. Cascade Holistic Economic Consultants, 60 IBLA 293, 301 (1981). The Board will give considerable deference to decisions reached by the EIS process even if reasonable people could differ over the conclusions drawn. Id. Absent compelling reasons for modification or reversal, such a decision will be affirmed. Mere differences of opinion and an attempt to substitute appellants' judgment for that of the decisionmaker will not suffice to reverse a decision. Id. at 302. Based on these standards, we conclude that appellants have failed to establish that either the FEIS or BLM's decision to approve the APD violates NEPA.

We find no merit in appellants' argument that the decision to approve the APD violated NEPA because BLM improperly rejected the no-action alternative. BLM clearly understood that the no-action alternative was available to it. Whatever confusion may have existed regarding this issue has been clarified in BLM's answer to appellants' SOR. The lease and unit stipulations provide a strong basis for precluding surface-disturbing activities and BLM has explicitly stated that it knew it had the authority to deny the APD during the decisionmaking process. Although it would have been preferable to have the decision clearly acknowledge the existence of this option, BLM's clarification on appeal sufficiently addresses this issue. See Sierra Club (On Reconsideration), 84 IBLA 175, 178 (1984). Additionally, the Record of Decision and the FEIS adequately discuss the no-action alternative. See, e.g., FEIS at 34-38, 150-53, 194-96. Thus, we find BLM recognized that the no-action alternative was available and adequately considered that alternative in the FEIS.

We similarly reject appellants' argument that BLM's grant of exceptions to lease and unit stipulations for access road construction is not supported by the analysis in the FEIS and accompanying Engineering Design and Geotechnical Evaluation Report. Because the proposed access road would traverse some areas with unstable soil, greater than 40-percent slopes, and located within 500 feet of streams, approval of the APD required exceptions to various lease and unit stipulations limiting those activities. Although appellants characterize BLM's decision as a waiver, we find that both BLM and Amoco clearly considered the decision as an exception which was limited to the specific proposal before BLM, and not a lease-wide or unit-wide waiver of the stipulations. We note that the lease stipulations explicitly recognize that exceptions may be granted and the stipulations may be modified. To justify an exception to the stipulations, Amoco was required to demonstrate that satisfactory construction, operation, maintenance, and rehabilitation of the access road could be accomplished, and that unacceptable adverse impacts could be mitigated. To meet this burden, Amoco prepared an Engineering Design and Geotechnical Evaluation Report and an Errata Sheet to that report.

The report comprehensively discussed the alignment required for the road to be feasible; the construction methods and techniques necessary to avoid stream sedimentation, slumping, and landslides; and the requirements for successful reclamation. It described geometric design criteria,

identified and analyzed geotechnical considerations, and incorporated specific design and construction criteria to minimize adverse environmental impacts. The report included site-specific geotechnical evaluations based on site investigations, excavations of test pits, test borings, and laboratory analysis. Based on these technical evaluations, specific recommendations for road design were formulated to provide the basis for the engineering design portion of the report. Relying on this report, BLM concluded that the mitigation measures and engineering design of the access road eliminated or reduced adverse impacts to an acceptable level.

Appellants challenge the adequacy of that report. Their discussion of its deficiencies is based on the February 26, 1988, comment letter submitted by Pete Jorgensen, a road engineer for Teton County, Wyoming. BLM responded point-by-point to the issues raised in the letter (Reviewer Comments and Agency Responses at C-2 to C-4). The Board has held that professional disagreements in the analysis of the same problem are endemic in every field; if each professional were permitted to discredit the work of colleagues, nothing would ever be accomplished. Sierra Club (On Judicial Remand), 80 IBLA 251, 266 (1984). NEPA does not require resolution of disagreements among scientists as to methodology. See Oregon Environmental Council v. Kunzman, 817 F.2d 484, 496 (9th Cir. 1987); Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 986 (9th Cir. 1985). We find that the report thoroughly analyzed the relevant geotechnical considerations; the report and BLM's response to Jorgensen's comment letter demonstrate that all the deficiencies alleged by appellants were considered. Thus, BLM's decision to grant the exceptions to the stipulations was made after a careful analysis of all relevant evidence concerning the proposed access road, and fully complies with NEPA.

Appellants' argument that the mitigation measures discussed in the FEIS and incorporated in the decision do not meet the requirements of NEPA is unpersuasive. An EIS must include a discussion of mitigation measures, but "[a]s long as significant measures are undertaken to mitigate the project's effects, the measures need not compensate completely for adverse environmental impacts." Oregon Natural Resources Council v. Marsh, 832 F.2d 1489, 1493 (9th Cir. 1987), cert. granted, 56 U.S.L.W. 3879 (U.S. June 27, 1988) (No. 87-1704). The FEIS contains a comprehensive analysis of mitigation measures for the various impacts identified, both as part of the discussions of the individual environmental consequences of the project and as a separate chapter in the FEIS. The analysis includes consideration of the effectiveness of the mitigation measures and discussion of a monitoring program designed to ensure their success.

Appellants argue that the measures are inadequate because they are unproven or ineffective, but fail to submit any specific data or argument supporting this claim, except as it relates to the grizzly bear mitigation measures. Even their discussion of the road closure measure for bear mitigation lacks specificity or supporting data. BLM counters with numerous examples from other projects of effectiveness of the mitigation measures, including road closures. Appellants' contention that there is no demonstration that the mitigation measures will be implemented and enforced ignores the plain language of the approval decision, which explicitly conditions

that approval on the implementation and enforcement of those measures. Appellants' unsubstantiated assertions of ineffectiveness and unenforceability do not outweigh the evidence that the contemplated measures fully comply with NEPA requirements.

Appellants' argument that the scope of the FEIS was improperly defined because it failed to include full field development partially rests on appellants' erroneous view that BLM waived various lease and unit stipulations, thereby limiting its authority to preclude further development. As BLM and Amoco agree, the exceptions to the stipulations granted for this one project do not expand Amoco's rights, and BLM retains full authority to deny all further development on the lease. Thus, any additional plans for further development must be approved by BLM before such development can commence. Full field development will depend on Amoco's ability to obtain further authorization from BLM, and any development plan will be subject to environmental review under NEPA and the ESA.

Appellants argue that full field development should have been included within the scope of the FEIS because the drilling of the exploratory well and full field development are "connected actions" as defined in 40 CFR 1508.25. "Actions are connected if they: (i) [a]utomatically trigger other actions which may require environmental impact statements[;] (ii) [c]annot or will not proceed unless other actions are taken previously or simultaneously[; or] (iii) [a]re interdependent parts of a larger action and depend on the larger action for their justification." *Id.* Approval of the APD clearly does not automatically trigger full field development, and the well can be drilled without other actions occurring previously or simultaneously. Furthermore, the drilling of an exploratory well does not depend on full field development for its justification and has independent utility because it will increase knowledge of the existence or lack of oil and gas reserves in the area.

When an exploratory well is drilled the party undertaking the project hopes to find sufficient oil and/or gas reserves to make full scale development and production economically feasible. However, unless and until oil or gas is discovered such development is speculative at best. Amoco states that even if this well indicates the presence of oil and/or gas, at least one additional exploratory well would have to be drilled to determine the extent of the field. Only if those wells also were successful would consideration be given to full field development. All such plans of development would be subject to environmental scrutiny.

The FEIS briefly addresses full field development in Appendix A; this discussion suffices given the current status of the proposal. As the Board has held in a similar context:

The EIS is not inadequate by reason of its failure to include a full-blown study and assessment of "full field development" of the unit in the event that the exploratory well is completed as a producer of commercial quantities of oil and/or gas. The prospect of full field development is addressed in the study to the extent necessary to consider the drilling of a single exploratory well on

the unit, which is the objective of this EIS. The record indicates that the agencies intend that additional studies will be done prior to permitting expanded development.

Sierra Club (On Judicial Remand), 80 IBLA at 267; see Park County Resource Council v. U.S. Department of Agriculture, 613 F. Supp. 1182, 1188 (D. Wyo. 1985), aff'd, 817 F.2d 609 (10th Cir. 1987). 5/ Accordingly, we find that the FEIS fully complies with NEPA's requirements in all respects.

[2] Section 7(a)(2) of the ESA, as amended, 16 U.S.C. | 1536(a)(2) (1982), provides that:

Each Federal agency shall \* \* \* insure that any action authorized, funded, or carried out by such agency \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical \* \* \*. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

The court in Thomas v. Peterson, 753 F.2d 754, 763 (9th Cir. 1985), describes a three-stage process for complying with the ESA. First, an agency must determine whether an endangered or threatened species may be present. If such a species is present, the agency must prepare a BA to determine whether the species is likely to be affected by the action. The BA may be part of an EIS. If the species would likely be affected, the agency must conduct a formal consultation with FWS, resulting in a biological opinion prepared by FWS.

BLM determined that the grizzly bear, a threatened species, existed in the project area and prepared a BA to determine whether the project would likely affect the bears. The original BA (FEIS Appendix E), based on the proposal as it existed at that time, concluded that the project "may effect" the bears (FEIS at E-12). Further analysis of seasonal grizzly bear habitat use and informal consultations with FWS were undertaken. As a result, Amoco added additional bear conservation measures to its proposal. An addendum to the BA was prepared evaluating the revised proposal and new mitigation measures which resulted in a "no effect" determination (FEIS at E-24). By letter dated August 10, 1987, FWS stated that, pursuant to 50 CFR 402.14(k), it concurred with the "no effect" determination for the incremental step/exploration phase of the project, specifically pointing out that "it is important that the Forest Service continues consultation with respect to the entire action and obtains biological opinions, as required, for each incremental step; and fulfills its continuing obligation to obtain sufficient

5/ To the extent the decision in Conner v. Burford, 836 F.2d 1521 (9th Cir. 1988), may be construed as requiring a different result, we note the conflict between that decision and Park County Resource Council, supra, which is a Tenth Circuit decision controlling in the jurisdiction in which this case arises.

data upon which to base a final biological opinion." No further consultation with FWS nor the preparation of a biological opinion was required for this incremental step.

The BA and addendum (Appendix E to the FEIS) identify the threatened species expected to exist in the area affected by the project and the habitat essential to the species. They analyze the effect of the proposed action on the species and habitat and discuss the cumulative effects resulting from the proposal in relation to other relevant activities. They include a determination of the effect of the project on the species and recommendations of measures necessary to protect and conserve the species in accordance with the ESA.

The BA and addendum clearly and comprehensively address the cumulative impacts of the proposed project on the grizzly bear, the value of various habitats to the grizzly bear, the efficacy of road closures as compensation for otherwise adverse effects on the grizzly bear, and the impacts of this phase of oil and gas exploration on the grizzly bear. Thus, appellants' contention that these issues were not considered is refuted by the record. The compensatory measures identified in the BA and addendum were incorporated into the FEIS and made explicit conditions for approval of the APD. These measures include road closures in the spring to preserve riparian habitat for bears as well as the closure and reclamation of 4.2 miles of existing logging roads in MS 1 grizzly bear habitat areas. Further studies of grizzly bear utilization will be enhanced by the memorandum of understanding for grizzly bear monitoring signed by WGFD, FS, and Amoco. Thus, we find that BLM clearly has met its obligation to prevent jeopardy to the grizzly bear: the measures undertaken will actually increase bear habitat and improve the bears' recovery chances. 6/

Finally, appellants' argument that BLM erred by not using the best available data fails. BLM states that it did not use the CEM grizzly bear model because some of the data necessary to run the model was not currently available, and there was insufficient time to gather the information (see FEIS at 117). BLM notes, however, that the basic variables that drive the CEM were used as the basis for the cumulative effects analysis in the BA and addendum. (See FEIS at 198.) BLM carefully explained the alternative methods used and analyzed the effectiveness of those methods in measuring the impacts of the project on the grizzly bear. In so doing, BLM consulted experts and relied on materials recognized as standard works in the field. Appellants' attacks on the scientific methodology used by BLM fail to establish a basis for finding error in BLM's evaluation process. There

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6/ Appellants argue that BLM has an affirmative duty to seek to conserve threatened species under 16 U.S.C. § 1536(a)(1) (1982). Although it is unclear whether the cited section applies to this case because its terms limit it to programs administered by the Secretary and not to individual actions authorized by an agency, see Carson-Truckee Water Conservancy District v. Clark, 741 F.2d 257, 262 (9th Cir. 1984), cert. denied, 105 S.Ct. 1842 (1985), we find that BLM has fulfilled this duty because this project will result in a net increase in essential grizzly bear habitat.

has been no showing that BLM failed to conduct a full and careful review of the available and relevant data prior to making its decision or failed to initiate necessary tests and studies. As noted earlier, scientific disagreements among experts do not require a determination that BLM's decision was flawed. Sierra Club (On Judicial Remand), 80 IBLA at 266.

The record establishes that BLM's decision was based on consideration of relevant factors and there was no clear error in judgment. Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d at 985. Appellants have failed to demonstrate deficiency in BLM's decisionmaking process. Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 684 (D.C. Cir. 1982). BLM fulfilled the requirements of the ESA and its compensation plan provides adequate measures for protection of the grizzly bear.

Without further belaboring this decision with additional references to contentions of appellants regarding errors and omissions in the preparation of the FEIS, and other errors of fact and law, except to the extent they have been expressly or impliedly addressed in this decision, they are rejected on the ground they are, in whole or in part, contrary to the facts and law or are immaterial. National Labor Relations Board v. Sharples Chemicals, Inc., 209 F.2d 645, 652 (6th Cir. 1954).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and the interim stay is lifted.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge